DAUD DOMO & ANOR

v.

PP

HIGH COURT SABAH & SARAWAK, LIMBANG
HASAN LAH JC
[CRIMINAL APPEAL NO: 42-02-98 (LG)]
19 OCTOBER 1998

CRIMINAL PROCEDURE: *Appeal - Appeal to High Court - Notice of appeal - Lodging of - Court at which notice must be lodged - Whether must be lodged with court at which trial was held or at which judgment or sentence was passed - Territorial jurisdiction of Sessions Court - Criminal Procedure Code, s. 307(i)*

CRIMINAL PROCEDURE: *Appeal - Appeal to High Court - Petition of appeal - Lodging of - Court at which petition must be lodged - Whether must be lodged with court at which trial was held or at which judgment or sentence was passed - Territorial jurisdiction of Sessions Court - Time limit for lodging petition - Calculation of - Criminal Procedure Code, s. 307(iv), (v), (ix)*

Both the defendants were convicted by the Sessions Court of culpable homicide not amounting to murder and were sentenced to five years' imprisonment each under s. 304 of the Penal Code read with s. 34 thereof. The defendants appealed against both conviction and sentence while the prosecution appealed against the adequacy of the sentence. At the hearing, the prosecution took a preliminary objection respecting the competency of the appeal, *viz*, that the defendants' notice of appeal ('the notice') and petition of appeal ('the petition') had contravened s. 307 of the Criminal Procedure Code ('the CPC'). It was submitted that the petition was lodged out of time whilst both the notice and the petition were lodged with the wrong court.

Held:

[1] Section 307 of the CPC requires both the notice of appeal and the petition of appeal to be lodged with the court at which the trial was held or at which the judgment or sentence was passed, which in this case was the Sessions Court at Limbang and **not** the Sessions Court at Miri. Both s. 307(i) and (iv) of the CPC are mandatory provisions. The Sessions Court at Limbang has its own territorial jurisdiction as provided under s. 59(2) of the Subordinate Courts Act 1948. Hence, both the notice and the petition were defective.

[2] As the appeal record (containing *inter alia* the grounds of decision and the notes of evidence) was served on the defendants' advocate on 24 March 1998, he had to file the petition on or before 3 April 1998. Hence, the petition lodged on 18 May 1998 was out of time (s. 307(iv) & (v) of the CPC) and the appeal was deemed to have been withdrawn (s. 307(ix) of the CPC).

[Preliminary objection upheld; appeal struck out.]

Case(s) referred to:
Jayasankaran v. Public Prosecutor [1983] 1 MLJ 379 ***(foll)***

Legislation referred to:
Criminal Procedure Code, s. 307(i), (iv), (v)
Penal Code, s. 304
Subordinate Courts Act 1948, s. 59(2)

For the defendants - Anthony Tai; M/s Anthony Tai Advocs
For the prosecution - Bhupinder Singh DPP

Reported by Gan Peng Chiang

JUDGMENT

Hasan Lah JC:

Both Appellants were convicted by the Sessions Court at Limbang on a charge of culpable homicide not amounting to murder of one Lee Cheat Poh on 14 October 1994 at 4.55pm at Bamboo Cafe, Bank Street, Limbang, an offence punishable under s. 304 first limb of the Penal Code (FMS Cap 45) read together with s. 34 of the same Code. The appellants were sentenced to five years' imprisonment each. The sentences, however, were stayed pending appeal. The appellants appealed against both the conviction and sentence and the Public Prosecutor appealed against the inadequacy of the sentence.

When this appeal came up for hearing before me on 16 September 1998 the learned Deputy Public Prosecutor raised a preliminary point of law on the competency of the appeal made by the appellants on the following grounds:

(1) The lodging of the notice of appeal by the appellants was not done in accordance with the provisions of subs. (i) of s. 307 of the Criminal Procedure Code;

(2) The lodging of the petition of appeal by the appellants was not done in accordance with the provision of subs. (iv) of s. 307 of the Criminal Procedure Code.

For ease of reference I reproduce the relevant provisions of the said s. 307. They read:

307. (1) Except in any case to which section 304 applies and subject to the provisions of sections 305 and 306 any person who is dissatisfied with any judgment, sentence or order pronounced by any Magistrate's Court in a criminal case or matter to which he is a party may prefer an appeal to the High Court against such judgment, sentence or order in respect of any error in law or in fact or on the ground of the alleged excessive severity or of the alleged inadequacy of any sentence by lodging, within ten days from the time of such judgment, sentence or order being passed or made, with the clerk of such Magistrate's Court a notice of appeal in triplicate addressed to the High Court and by paying at the same time the prescribed appeal fee.

(ii) ...

(iii) When a notice of appeal has been lodged the Court appealed from shall make a signed copy of the grounds of decision in the case and cause the same to be served upon the appellant or his advocate by leaving in the said copy at the address mentioned in the notice of appeal or by posting it by registered post addressed to the appellant at the said address.

(iv) Within ten days after the copy of the grounds of decision has been served as in the last preceding subsection provided, the appellant shall lodge with the clerk of the Magistrate's Court at which the trial was held a petition of appeal in tripicate addressed to the High Court.

(v) If the appellant within the period provided in subsection (1) for lodging his notice of appeal has applied for a copy of the notes of the evidence recorded by the Magistrate at his trial he shall lodge his petition of appeal as provided in subsection (4).

(a) within the period provided by such subsection, or

(c) within a period of ten days from the date when a notice is left at his address for service specified in subsection (2) that a copy of the notes of evidence can be had free of charge.

whichever period shall be the longer.

(vi) ...

(vii) ...

(viii) ...

(ix) If a petition of appeal is not lodged within the time prescribed by

this section the appeal shall be deemed to have been withdrawn and the trial Court shall enforce its sentence or order if any stay of execution has been granted, but nothing herein contained shall be deemed to limit or restrict the powers conferred upon a Judge by section 310.

To appreciate the learned Deputy Public Prosecutor's objection it is necessary to set out the background to this appeal in some details.

The appellants were convicted and sentenced by the Sessions Court of Limbang on 16 January 1998. At that time both of them were represented by Mr. Michael Labo of M/s Michael Labo & Company. On 21 January 1998 M/s Michael Labo & Company sent the appellants' Notice of Appeal by fax to the Sessions Court at Miri appealing against both the conviction and sentence and that fax was received by the Registrar of the Sessions Court, Miri on the same day.

According to the learned Deputy Public Prosecutor the notes of the evidence were received by M/s Michael Labo & Company on 24 March 1998. The Registrar of the Sessions Court, Miri sent a copy of the Appeal Record for the case to the Deputy Public Prosecutor and M/s Michael Labo & Company by a letter dated 16 March 1998. According to the card for advice of delivery inland registered letter the said letter was posted to the office of M/s Michael Labo & Company on 20 March 1998 and it was received by the Post Office in Lawas on 24 March 1998. There was an acknowledgment from the office of M/s Michael Labo & Company but it was undated.

On 19 March 1998 the second appellant instructed Mr. Anthony Tai of the Anthony Tai Advocate to take over the case from M/s Michael Labo & Company. On 20 March 1998 Mr. Anthony Tai sent a letter to M/s Michael Labo & Company to inquire whether he had any objection and on 27 March 1998 Mr. Michael Labo informed Mr. Anthony Tai verbally that he had no objection. On the same day Mr. Anthony Tai wrote to the Registrar of the Subordinate Court in Miri informing him that M/s Anthony Tai Advocates was taking over the case and at the same time requesting for notes of the proceedings of the case. That letter was faxed to the Registrar of the Subordinate Court on the same day.

On 1 April 1998 the first appellant instructed Mr. Anthony Tai to take over the case and on the same day Mr. Anthony Tai wrote to the Registrar of the Subordinate Court in Miri informing the Registrar that he has taken over the first appellant's case and requested for the notes of proceedings.

On 12 May 1998 M/s Anthony Tai Advocates received the Appeal Record for the case from the Registrar of the Subordinate Court in Miri. On 18 May 1998 M/s Anthony Tai Advocates sent the petition of appeal to the Registrar of the Subordinate Court, Miri.

Based on the said background it was submitted by the learned Deputy Public Prosecutor that the notice of appeal should have been filed at the Jabatan Kehakiman Limbang and not at the office of the Sessions Court at Miri in accordance with the requirement of the provision of s. 307(i) of Criminal Procedure Code that the notice has to be filed at the place where the trial was held. As such the said notice of appeal was bad in law and should be rejected by the court. It was further submitted by the learned Deputy Public Prosecutor that the filing of the petition of appeal by the appellants was not filed at the place where the trial was held *ie*, at Limbang. In this case the petition of appeal was filed at the office of the Sessions Court in Miri.

It was also contended by the learned Deputy Public Prosecutor that the filing of the petition of appeal was bad in law because it was filed out of time. Accordingly to the learned Deputy Public Prosecutor the grounds of decision and the notes of proceedings of the case were received by M/s Michael Labo & Company, the counsel for the appellants then, on 24 March 1998 and therefore the petition of appeal should have been filed on or before 3 April 1998 in accordance with subs. (v) of s. 307 of the Criminal Procedure Code that it has to be filed within ten days after a copy of the notes of the evidence has been served. In this case the petition of appeal was only filed on 19 May 1998, about 1½ month later. Since the appellants have not filed the petition of appeal within the time prescribed the appeal, by virtue of s. 307(ix) of the Criminal Procedure Code, should be deemed to have been withdrawn

Mr. Anthony Tai on the other hand submitted that the filing of the notice and the petition of appeal in Miri was proper since the Sessions Court in Limbang was under the jurisdiction of the Sessions Court at Miri. As such, according to the learned Defence Counsel there was no basis on the objection made by the learned Deputy Public Prosecutor on this point.

It was contended by the learned Defence Counsel that the petition of appeal was filed within the time prescribed. According to the learned Defence Counsel he received the notes of the evidence on 12 May 1998 and he immediately filed the petition of appeal on 18 May 1998.

The offence committed by both appellants took place in Limbang and the case against them was registered as the Limbang Court Criminal Case No. SC/AR/2/95(LBG). The trial was held at the Sessions Court in Limbang and the appellants were convicted and sentenced by the same Sessions Court. Under

the circumstances it is clear that the Sessions Court in Limbang has its own territorial jurisdiction to try offences committed within its territory. It is my view that subs. (i) of the section 307 of the Criminal Procedure Code requires the notice of appeal for this case to be filed at the Session Court at Limbang and not at the Sessions Court in Miri. I could not agree with the submission made by Mr. Anthony Tai that since Limbang is under the jurisdiction of Miri it was proper to file the notice of appeal in Miri. For administrative purposes the Sessions Court in Limbang comes under the jurisdiction of the Sessions Court in Miri as the arrangement was that the Sessions Judge from Miri went to hear cases in Limbang on circuit. But for hearing of cases the Sessions Court in Limbang has its own territorial jurisdiction as provided under s. 59(2) of the Subordinate Courts Act 1948, which reads:

> Subject to this Act or any other written law, a Sessions Court shall have jurisdiction to hear and determine any civil or criminal cause or matter arising within the local limits of jurisdiction assigned to it under this section, or if no such local limits have been assigned, arising in any part of the local jurisdiction of the respective High Court.

If what was submitted by Mr. Anthony Tai that since Limbang is under the jurisdiction of Miri it was proper to file the notice and petition of appeal in Miri was true then there was no necessity for the case to be filed in Limbang by the prosecution and also for the Sessions Judge to hear the case at Limbang.

In *Jayasankaran v. Public Prosecutor* [1983] 1 MLJ 379 Raja Azlan Shah L.P. (as he then was) has said at p. 380, para. F that:

> An appeal is instituted within the meaning of subsection (i) of section 307 of the Code when the appellant takes the initiative by lodging the notice of appeal in triplicate with the clerk of the Magistrate's Court which passed the judgment, sentence or order within the time prescribed. That, in our opinion, is a mandatory provision.

As such it is a mandatory requirement that the notice of appeal has to be filed at the Sessions Court which passed the sentence and in this case since the appellants have not lodged the notice of appeal at the Sessions Court which passed the sentence that notice of appeal was therefore defective and should be rejected.

On the same ground also I found that the petition of appeal filed by the appellants was defective and should have been rejected as it was not filed at the Sessions Court at which the trial was held. It is a mandatory requirement of s. 307(iv) that the petition of appeal shall be lodged with the clerk of the Sessions Court at which the trial was held.

On the issue whether the petition of appeal was filed within the time prescribed or not I found that the petition of appeal was filed outside the time prescribed.

Section 307(iv) provides that the petition of appeal shall be lodged within ten days after the copy of the grounds of decision has been served upon the appellant or his advocate and s. 307(v) provides that it shall be lodged within a period of ten days after the grounds of decision has been served or from the date when a notice is left at the appellant's address for service that a copy of the notes of evidence can be had free of charge, whichever period shall be the longer.

From the records it was clear that the Appeal Record (comprising several documents including the grounds of decision and notes of evidence) was served on 24 March 1998 at the office of M/s Michael Labo & Company, Lot 333, 1st Floor, Jalan Trusan, 98850 Lawas, which was the address given in the notice of appeal for the purpose of service. As such the grounds of decision and the notes of evidence were properly served on the appellants or their advocate on that date in accordance with subss. (iv) and (v) of s. 307 and therefore the date for filing of the petition of appeal should be calculated from that date. On 24 March 1998 M/s Michael Labo & Company was still the advocate for both appellants on record. Mr. Anthony Tai only informed the Registrar of the Subordinate Court at Miri on 27 March 1998 that he was taking over the second appellant's case from M/s Michael Labo & Company and on 1 April 1998 he again informed the same Registrar that he was taking over the first appellant's case.

On the aforesaid reasons and facts I agreed with the submission of the learned Deputy Public Prosecutor that the petition of appeal was not filed within time and as such the appellants have failed to comply with the mandatory requirement of filing the petition of appeal within the prescribed time and accordingly I held that the petition of appeal was also defective in this respects. As the appellants failed to file the petition of appeal before or on 3 April 1998 the appellants are, by virtue of s. 307(ix) of the Criminal Procedure Code, deemed to have withdrawn the appeal.

For the reasons stated above I allowed the preliminary objection made by the learned Deputy Public Prosecutor and accordingly I ruled that the appeal by both appellants was incompetent. The appeal by both appellants was therefore struck out.